

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DURAVEST, INC.

Plaintiff,

VISCARDI AG, WOLLMUTH, MAHER & DEUTSCH,  
LLP; MASON H. DRAKE, ESQ., BRUCE O'DONNELL  
CPA, BRUCE O'DONNELL CPA/PFS P.A.,  
BIOMEDICAL CONSULTANT SL, RICHARD  
MARKOLL and ERNESTINE BINDER MARKOLL,

Defendants.

X  
: No. 07 CIV 10590  
:  
: Hon. Jed Rakoff, U.S.D.J.  
:  
: **NOTICE OF MOTION**  
:  
:  
:  
:  
:  
:  
:  
:  
:  
X

## NOTICE OF MOTION

**PLEASE TAKE NOTICE** that, upon the annexed Affidavit of Barbara Thätig, sworn to on April 7, 2008, and the exhibit annexed thereto, and the Declaration of Mark W. Lerner, Esq., dated April 7, 2008 and the exhibit annexed thereto, and the accompanying memorandum of law, defendant Viscardi AG (“Viscardi”) will move this Court pursuant to the Court’s Order of March 17, 2008, before the Honorable Jed Rakoff of the Southern District of New York, at the United States Courthouse located at 500 Pearl Street, New York, New York 10007, for an Order dismissing the Complaint as to Viscardi pursuant to Rules 12(b)(2), 12(b)(6), and/or 9(b) of the Federal Rules of Civil Procedure, and for such other and further relief as this Court may deem just and proper.

**PLEASE TAKE FURTHER NOTICE** that, in accordance the Court's Order of March 17, 2008, Plaintiff's Answering brief, together with any supporting papers, is due on or before April 28, 2008, Viscardi's Reply brief, together with any supporting papers, is due on or before May 5, 2008, and oral arguments shall be heard on this motion on May 16, 2008 at 4:00 p.m.

Dated: New York, New York  
April 7, 2008

KASOWITZ, BENSON, TORRES  
& FRIEDMAN LLP

/s/ Mark W. Lerner

Mark W. Lerner  
Joshua A. Berman

1633 Broadway  
New York, New York 10019  
Telephone: (212) 506-1700  
Facsimile: (212) 506-1800

*Attorneys for Defendant Viscardi A.G.*